

Higher Education Residency Requirements

January 2004

Office of Performance Evaluations
Idaho State Legislature



Report 04-01

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December 24, 2003

Members
Joint Legislative Oversight Committee
Idaho State Legislature

At the direction of the Joint Legislative Oversight Committee (JLOC), we have completed an evaluation of higher education residency requirements. JLOC requested this study to determine if higher education had been applying residency requirements correctly and consistently.

We conclude that state residency requirements have not been uniformly interpreted or applied among Idaho's four-year education institutions—Boise State University, Idaho State University, Lewis-Clark State College, and the University of Idaho. Although charged with adopting uniform standards for determining residency, the State Board of Education has given institutions considerable discretion in the way residency requirements are implemented.

The report includes formal responses to our conclusions and recommendations from the four institutions, as well as the State Board of Education and the Office of the Governor.

We sincerely appreciate the cooperation of the State Board of Education and the four institutions in conducting this evaluation. We also thank the staff of the Office of the Governor, the Office of the Attorney General, and legislative Budget and Policy Analysis for providing input and technical assistance on this project.

This report was written and researched by Jim Henderson, Ned Parrish, and Brook Smith.

Sincerely,

A handwritten signature in black ink that reads "Rakesh Mohan".

Rakesh Mohan

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Higher Education Residency Requirements

Abstract

Idaho Code outlines the criteria for classifying students at Idaho's four-year higher education institutions as resident or nonresident. The determination of a student's residency status affects how much the student and the state contribute toward the cost of the student's education and affects the amount of revenue collected by the institution. Nonresident students pay between \$23,000 and \$27,000 more than Idaho residents for a four-year degree.

State residency requirements have not been uniformly interpreted or applied among Idaho's four-year higher education institutions: Boise State University, Idaho State University, Lewis-Clark State College, and the University of Idaho. The State Board of Education is required by statute to adopt uniform standards for determining residency. However, the board has given institutions considerable discretion, which contributes to a lack of uniformity in determining residency. The four institutions did not have adequate controls over their residency determination process. As a result, the institutions incorrectly awarded residency to a few out-of-state students, as well as made residency decisions based on insufficient information for many other students.

Executive Summary

Legislative Direction and Background

At the direction of the Joint Legislative Oversight Committee, we reviewed the residency determination process at Idaho's four-year higher education institutions: Boise State University, Idaho State University, Lewis-Clark State College, and the University of Idaho. The Oversight Committee requested an evaluation to determine if: (1) institutions were applying residency requirements accurately and uniformly; and (2) the State of Idaho had been subsidizing the education of nonresident students who had inappropriately been granted residency.

During the 2002 fall semester, about 82 percent of new students enrolled at Idaho's four institutions were classified as residents and 18 percent were classified as nonresidents. This residency classification of students significantly affects how much a student contributes toward the cost of his or her education. Nonresident students pay between \$23,000 and \$27,000 more than Idaho residents for a four-year degree. To qualify for residency, an applicant must meet one of the nine criteria listed in state statute or rule. The criteria primarily relate to the establishment of a domicile in Idaho for purposes other than education.

Residency Statute May Not Reflect Legislative Intent

Policymakers amended Idaho's residency law in 1992 to strengthen requirements for full-time, nonresident students to obtain residency in Idaho.¹ However, the amended statute has been interpreted in different ways by the four institutions, and may not have been implemented as policymakers intended. According to a legal analysis conducted by the Office of the Attorney General, the amended statute continues to allow full-time students to obtain residency after living in Idaho for 12 months and taking minimal steps to demonstrate their intent to make Idaho their permanent home. In general, it is easier for nonresident students to obtain residency at Idaho's higher education institutions than it is in most neighboring states.

Residency Determinations Lack Uniformity

Although required to develop uniform standards for residency determinations, the State Board of Education has given the institutions considerable discretion. This lack of direction has contributed to inconsistencies in the interpretation and application of residency requirements by the institutions. The institutions vary in what they require of students to demonstrate establishment of an Idaho domicile and how they set fees for part-time, nonresident students.

The four institutions did not have adequate controls over their residency determination process. As a result, the institutions incorrectly awarded residency to a few out-of-state students, and made residency decisions based on insufficient information for many other students. Additionally, the standard Application for Admission, the primary source of new student residency information, does not fully conform to the residency statute and rules.

¹ 1992 Idaho Sess. Laws, ch. 119, § 1, 394.

Recommendations

1. The Legislature should consider amending Idaho Code to clarify:
 - a. Whether full-time, nonresident students are presumed to be in Idaho primarily for educational purposes—unless they clearly demonstrate they are primarily engaged in activities other than those of a student
 - b. Whether nonresident students must establish and maintain a domicile in Idaho for 12 months in order to qualify for residency
 - c. Whether students who are granted residency on the basis of their parents' Idaho domicile should be financially dependent upon their resident parents and be under a certain age
 - d. The factors needed to show that domicile has been established primarily for purposes other than education, including any weighting of the factors
2. The State Board of Education should address the lack of uniformity in determining residency and other related issues by:
 - a. Amending its administrative rules to provide a uniform residency determination process
 - b. Modifying the statewide Application for Admission form to conform to state law and rules
 - c. Setting nonresident fees for part-time students in the same manner as for full-time students
3. Boise State University, Idaho State University, Lewis-Clark State College, and the University of Idaho should improve their residency determination process by:
 - a. Implementing quality assurance measures that identify high-risk residency determination cases for further review
 - b. Collecting information that addresses all residency factors listed in statute and rules, and basing residency determinations on full consideration of these factors

Chapter 1

Introduction

Idaho Code outlines the criteria for classifying students at Idaho's four-year higher education institutions as resident or nonresident. The determination of a student's residency status affects how much the student and the state contribute toward the cost of the student's education and affects the amount of revenue collected by the institution. During academic year 2002–2003, nonresident students paid an average of nearly \$6,300 per year more than Idaho residents.

Evaluation Scope and Objectives

In November 2002, the Joint Legislative Oversight Committee directed the Office of Performance Evaluations to assess whether Idaho's four-year higher education institutions were complying with state requirements in making residency determinations. Members raised concerns about whether (1) institutions were applying residency requirements accurately and uniformly; and (2) the State of Idaho had been subsidizing the education of nonresident students who were inappropriately granted residency.

To address these concerns, we asked:

- How accurately and uniformly have institutions applied residency requirements to initial residency determinations and appeals?
- Have residency determinations conformed to statutory and regulatory requirements?
- How do Idaho's residency requirements compare to those of neighboring states?

Methodology

As part of our study, we reviewed applicable statutes and rules, interviewed State Board of Education officials, and obtained a legal analysis from the Office of the Attorney General to clarify our understanding of key residency requirements. In addition, we interviewed staff of the Division of Financial Management and legislative Budget and Policy Analysis.

We visited each of Idaho’s four-year institutions—Boise State University, Idaho State University, Lewis-Clark State College, and the University of Idaho—to interview key staff and review student records. The review included nearly 750 cases involving initial determinations, residency appeals, and requests for a change in residency status. We also gathered information about residency requirements in Idaho’s six neighboring states.

Background

Nearly 7,000 new students enrolled at Idaho’s four institutions in the 2002 fall semester.¹ As shown in Exhibit 1.1, 82 percent of these new students were classified as residents and 18 percent were classified as nonresidents. To qualify for residency, an applicant must establish a domicile in Idaho for purposes other than education, and have been physically present in Idaho for 12 months. Applicants are also granted residency if their parent(s) or spouse qualify for residency, or if they graduated from an Idaho high school the preceding semester.² Exhibit 1.2 shows these and other provisions that qualify students for residency.³

¹ This total does not include transfer, readmission, professional-technical, and non-degree seeking students.

² More than 60 percent of all new undergraduate students graduated from Idaho high schools the previous spring.

³ IDAHO CODE § 33-3717(3)(a)–(b) (2001) lists two circumstances where residency may not be granted: (1) to a student attending an Idaho institution with financial assistance from another state; or (2) to a foreign student who has not been granted permanent or temporary residence, “refugee-parolee,” or “conditional entrant” status.

Exhibit 1.1: Enrollment and Residency Status, 2002 Fall Semester^a

<u>Institution</u>	<u>Resident</u>		<u>Nonresident</u>		<u>Total Number</u>
	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>	
University of Idaho	1,629	70%	708	30%	2,337
Lewis-Clark State College	258	80	64	20	322
Boise State University	2,052	87	295	13	2,347
Idaho State University	1,710	89	203	11	1,913
TOTAL	5,649	82%	1,270	18%	6,919

^a Does not include transfer, readmission, professional-technical, and non-degree seeking students.

Source: Office of Performance Evaluations analysis of data obtained from the four institutions.

Exhibit 1.2: Residency Criteria for Idaho's Higher Education Institutions

A student may be classified as a resident under any of the following conditions:

- A. One of the student's parents or court-appointed guardians have maintained a bona fide Idaho domicile for 12 months preceding enrollment.
- B. Student receives less than 50 percent support from out-of-state parents, has continuously resided in Idaho for at least 12 months prior to the date of enrollment, and has established a bona fide domicile in Idaho for purposes other than education.
- C. Student graduated from an accredited Idaho high school and enrolls the first term following graduation.
- D. Student's spouse is a resident for tuition purposes.
- E. Student is a member of the armed forces of the United State stationed in Idaho on military orders.
- F. Student's parent or guardian is a member of the armed forces of the United States stationed in Idaho on military orders and provides more than 50 percent of student's support.
- G. Student separated, under honorable conditions, from the armed forces after at least 2 years of service, has designated Idaho as his or her intended domicile, or Idaho was student's home of record while in service.
- H. A student who had previously resided in Idaho for 12 months, has been absent from the state for a period of 12 months or less, and has not established a domicile elsewhere.
- I. Student is a member of a specified Native American Indian tribe.

Source: IDAHO CODE § 37-3717(2).

The decision of whether a student is classified as a resident or nonresident significantly affects the cost of the student's education. Exhibit 1.3 shows nonresident students paid between \$5,710 and \$6,720 more than resident students to attend Idaho's higher education institutions during academic year 2002–2003.⁴ The difference in costs for resident and nonresident students over four years could add to nearly \$27,000. Nonresident students may, however, qualify for one or more tuition waiver programs designed to encourage certain students to study in Idaho. These waiver programs are discussed in Appendix A.

⁴ An academic year consists of a fall semester beginning in August and a spring semester beginning in January.

Exhibit 1.3: Full-Time Undergraduate Student Fees by Residency Status, 2002–2003 Academic Year^a

	<u>Resident</u>	<u>Non-resident</u>	<u>Difference</u>
Boise State University	\$2,984	\$9,384	\$6,400
Idaho State University	3,136	9,376	6,240
Lewis-Clark State College ^b	2,852	8,562	5,710
University of Idaho	3,044	9,764	6,720

^a Graduate fees and fees for some programs may be higher. However, the difference between resident and nonresident fees are the same.

^b Lewis-Clark State College has a reduced nonresident fee of \$6,020 for Asotin County, Washington residents.

Source: Idaho university and college catalogs.

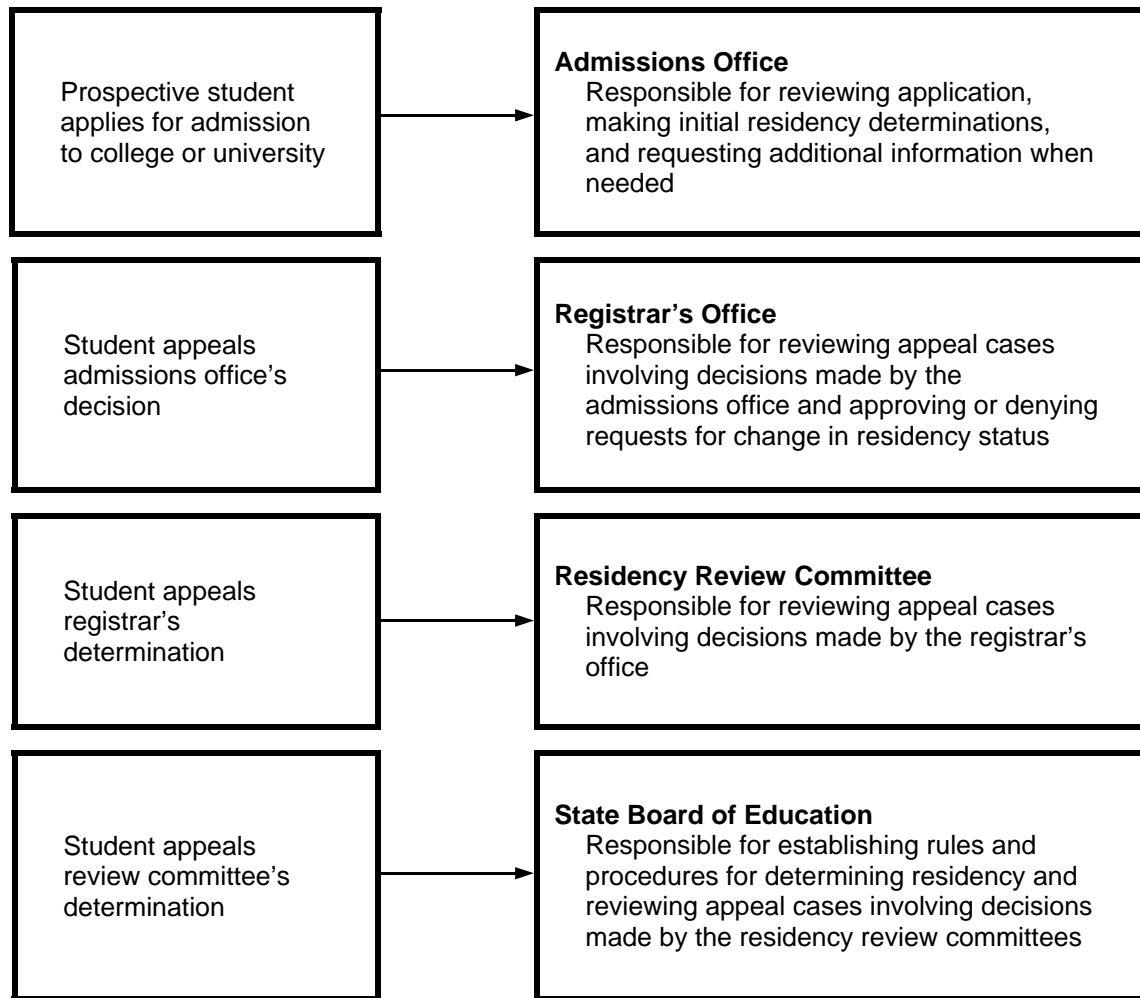
The question of whether a student qualifies for residency is considered when students apply for admission, appeal a residency determination, or request a change in residency status. A residency determination must be made on all applications for admission, whether applicants ultimately enroll or not. A relatively small number of students appeal residency determinations or request their residency status be changed.⁵

Residency determinations are made at a number of levels within the university system, depending upon whether the determination occurs following receipt of an application, in response to a student's appeal, or request for change in residency status.⁶ As shown in Exhibit 1.4, the admissions office of each institution makes initial residency determinations. The registrar's office handles appeals of initial residency determinations and requests for residency status changes. The residency review committee, a three- to five-member committee established in rule by the State Board of Education at each institution, hears appeals of residency determinations made by the registrar's office. Students may appeal committee determinations directly to the State Board of Education.

⁵ For example, for the 2002 fall semester, Boise State University's admissions staff considered more than 4,300 applications from prospective new freshmen, of which about 2,000 actually enrolled. For the same semester, the registrar's office considered 248 appeals and residency change requests, and the residency review committee considered 22 appeals. No cases were appealed to the State Board of Education for the 2002 fall semester. (The board considered only three appeals by Boise State University students over a 4½-year period.)

⁶ Students appeal when they disagree with their residency determination. Nonresident students request a change in residency status when their circumstances change and they believe they qualify as residents.

Exhibit 1.4: Roles and Responsibilities of Residency Determination Process



Source: Office of Performance Evaluations interviews with officials of the four institutions.

Report Organization

The remainder of this report is organized as follows:

- Chapter 2** discusses how amendments to Idaho's residency law may not have been implemented as policymakers intended. It describes inconsistencies in how the four institutions have interpreted and implemented various aspects of residency law. The chapter includes information on how neighboring states have addressed similar issues.

- **Chapter 3** discusses how the State Board of Education has not set uniform guidelines and procedures for determining residency and instead left institutions to set their own procedures. The chapter describes errors made by institutions and weaknesses in the residency determination process.
- **Chapter 4** summarizes our conclusions and provides three recommendations to address evaluation findings discussed in Chapters 2 and 3.
- **Appendix A** lists tuition waiver programs available to certain nonresident students.
- **Appendix B** is a legal analysis of the residency statute provided by the Office of the Attorney General at our request.
- **Appendix C** is the standard Application of Admission used by the four institutions.
- **Responses to the Evaluation** contains responses to this report from the four institutions, the State Board of Education, and the Office of the Governor.

Chapter 2

Residency Requirements

In spite of the Legislature's earlier efforts to strengthen Idaho's residency requirements for college and university applicants, these requirements have been interpreted differently by Idaho's four-year higher education institutions. Current state law and rules identify factors that institutions are to consider in making residency determinations, but do not specify how many of these factors must be satisfied to obtain residency or assign any weight to them. Generally, it is easier for nonresident students to obtain residency at Idaho's higher education institutions than it is in most neighboring states.

Residency Statute May Not Reflect Legislative Intent

In 1992, the Legislature made changes strengthening Idaho's residency law to make it more consistent with neighboring states. The change required students to have "...established a bona fide domicile in this state primarily for purposes other than educational" in addition to meeting the previous requirement of having "continuously resided in the state of Idaho for 12 months."¹

These amendments may not have been implemented as the Legislature intended. In our view, the 1992 amendments were likely intended to prevent full-time, nonresident students from qualifying for residency as long as they continued to attend school full-time. However, according to a legal analysis received from the Office of the Attorney General, the current statutory language does not prohibit full-time, nonresident students from gaining residency in Idaho.² The Attorney General's legal analysis is included in Appendix B.

¹ 1992 Idaho Sess. Laws, ch. 119, § 1, 394.

² The Office of the Attorney General and the Office of Performance Evaluations approached this question from different perspectives. The Attorney General has applied rules of statutory construction to form an opinion as to how a court might rule if presented with the question. As part of legislative staff, we have focused on what the legislature intended to accomplish with the 1992 amendments to the residency laws.

Criteria for Establishing Domicile Is Subject to Differing Interpretations

Domicile is a key factor for determining whether students qualify for residency.³ Establishing domicile involves more than mere physical presence in Idaho. Students must demonstrate that they intend to make Idaho their permanent home.⁴ To help institutions determine if students have demonstrated intent to establish a bona fide domicile in Idaho, Idaho Code and administrative rules provide nine specific and one general factors.⁵ These factors are summarized in Exhibit 2.1.

While these factors provide criteria for assessing students' domiciliary intent, the current statute and rules neither provide guidance on the number of factors that must be met nor the importance of each factor. Institution officials are left to use

³ IDAHO ADMIN. CODE, January 1, 1994, IDAPA 08.01.04.102.

⁴ Domicile is defined as an individual's "true, fixed, and permanent home and place of habitation; the place where the individual intends to remain and to which the individual expects to return when he or she leaves without intending to establish a domicile elsewhere. A person may have more than one residence but only one domicile." *Black's Law Dictionary*, 6th ed. (St. Paul: West, 1990), 484–485.

⁵ Bona fide means "in or with good faith; honestly, openly, and sincerely; without deceit or fraud." *Black's Law Dictionary*, 6th ed. (St. Paul: West, 1990), 177.

Exhibit 2.1: Factors for Determining Domicile

1. Has the applicant registered and paid Idaho taxes or fees on a motor vehicle or other item of personal property for which state registration and the payment of state tax or fee is required?
2. Has the applicant filed an Idaho income tax return?
3. Has the applicant maintained permanent full-time employment in the state?
4. Has the applicant registered to vote for state-elected officials in Idaho at a general election?
5. Does the applicant own real property in Idaho?
6. Does the applicant hold an Idaho driver's license?
7. Has the applicant shown evidence of abandonment of a previous domicile?
8. Are the applicants' household goods located in Idaho?
9. Has the applicant established accounts with Idaho financial institutions?
10. Has the applicant shown evidence of other similar factors indicating his or her intent to be domiciled in Idaho?

Source: IDAHO CODE § 37-3717(4) and IDAPA 08.01.04.102.01–.10.

their discretion as to what is needed to qualify for residency.⁶ This discretion has led to a lack of uniformity in how Idaho's four institutions use these factors when making residency determinations.

Boise State University and Idaho State University have required students to prove substantive connections to Idaho through full-time employment and filing of taxes, while Lewis-Clark State College and the University of Idaho have deemed driver's licenses, vehicle registrations, and voter registrations as sufficient evidence of domiciliary intent. For example:

- The University of Idaho granted residency to a second-year law student who supported his request with an Idaho driver's license and a voter's registration card.
- In contrast, Boise State University denied residency to a student who held an Idaho driver's license but did not prove 12 months of full-time employment.

The length of time needed to demonstrate that students have established a domicile in Idaho has also been subject to varying interpretations by institution officials. Idaho Code specifies that a student can qualify for residency when he or she

“...has continuously resided in the state of Idaho for twelve (12) months next preceding the opening day of the term during which the student proposes to attend the college or university and...has in fact established a bona fide domicile in this state primarily for purposes other than educational.”⁷

Boise State University and Idaho State University have interpreted this provision as requiring students to demonstrate that they have maintained a domicile for 12 months before obtaining residency. In contrast, Lewis-Clark State College and the University of Idaho granted residency to students who have continuously resided in Idaho for 12 months and could demonstrate that they have established a domicile *at any time during* the 12-month period. In 1997, the University of Idaho's counsel issued a legal opinion to point out that while students must maintain a continuous presence in Idaho for 12 months, they could establish a domicile at any time during those 12 months. This is consistent with the legal analysis we received from the Office of the Attorney General (see Appendix B).

⁶ The State Board of Education is required to provide guidance and establish uniform standards for determining residency. This is discussed in detail in Chapter 3.

⁷ IDAHO CODE § 33-3717(2)(b), (2001).

Residency Requirements Are Less Stringent Than Neighboring States

We reviewed the residency statutes and rules in Idaho's six neighboring states to assess how other states have addressed residency and domicile issues.

Neighboring states have more clearly defined the time requirements for establishing a domicile and had established higher standards for obtaining residency. For example:

- *Washington.* Financially independent students or the parents of financially dependent students must have established and maintained a domicile in Washington for 12 months before enrollment. Additionally, Washington's residency law provides that students enrolled for *more* than six hours per semester be considered as residing in the state primarily for educational purposes unless the student can prove otherwise.⁸
- *Utah.* Unless a student has lived in Utah for 24 continuous months as a nonstudent, he or she is presumed to have moved to Utah for the purpose of education and is to be considered a nonresident for tuition purposes. Full-time students can appeal this presumption after they have lived in Utah for 24 months and completed a *minimum* of 60 semester hours of college work.⁹
- *Wyoming.* Students must reside in Wyoming and engage in activities other than those of a student for a year and have established a domicile in Wyoming in order to qualify for resident status.¹⁰
- *Montana.* A student registered for more than seven semester credits is presumed to be present in Montana primarily for educational purposes and the time during which the student is enrolled *does not count* toward the 12-month residency requirement.¹¹
- *Oregon.* A student must live in Oregon for 12 months primarily for purposes other than education. If enrolled in more than eight semester hours, they are presumed to be in Oregon primarily for educational purposes. Additionally, residency factors such as obtaining an Oregon driver's license, vehicle registration, voter registration, and the lease of living quarters alone are not sufficient evidence of establishing a domicile.¹²

⁸ Revised Code of Washington, RCW § 28B.15.012 (2002).

⁹ Utah State Board of Regents, Policy and Procedure R512, *Determination of Residency Status*, July 12, 2002.

¹⁰ Trustee Regulations of the University of Wyoming, ch. VIII (1999).

¹¹ Montana Board of Regents of Higher Education, Policy 940.1, *Residency Policy: Montana University System* (1999).

¹² Oregon Administrative Rules (OAR) 580-010-0029–0045, (1996).

- *Nevada*. To qualify for residency in Nevada, applicants are required to maintain a domicile for six months and the domicile must be “...genuine and established for purposes other than avoidance of tuition.”¹³

All of Idaho’s neighboring states require students (or their parents) to establish and maintain a domicile for a specified period of time (usually one year) before enrollment. Washington, Montana, and Oregon presume that nonresident students enrolled in more than a specified number of semester hours are present in the state primarily for educational purposes. While students can overcome this presumption, full-time students may find it difficult to prove they are primarily engaged in activities other than those of a student.

Idaho’s residency statute differs from neighboring states in one other way. In Idaho, applicants *of any age* can obtain residency if their parents qualify for residency, even if students are not legally dependent upon their parents. To illustrate, we reviewed the record of a 30-year-old applicant who had recently moved to Idaho from another state and was granted residency at one of the institutions based on his mother’s residency in Idaho. In contrast, all six neighboring states require students to either be a dependent of the resident parent or be in their early twenties.

At one time, Idaho had more restrictive requirements. In the 1970s, parent-qualified residency was limited to students “below the legal voting age.” When the legal voting age was changed from 21 to 18, Idaho Code was amended to strike the age limitation and add a requirement that the student be a dependent of the resident parent. In 1989, Idaho Code was again amended to strike the dependency requirement in order to allow a child of divorced parents, one of whom lived in Idaho, to attend college in Idaho even if the student lived with the out-of-state parent. The minutes of legislative committee hearings about this amendment did not discuss how the amendment would affect older, financially independent children of Idaho parents.

Chapter 4 includes a recommendation that addresses our findings in this chapter.

¹³ Nevada Revised Statutes (NRS) § 396.540, (2001).

Chapter 3

State Board of Education Oversight and Residency Determinations

Although required by law to develop uniform standards for residency determinations, the State Board of Education has given much discretion to the four institutions. This lack of direction from the board has contributed to inconsistent interpretation and implementation of residency requirements by the institutions. The institutions vary in what they require from students to demonstrate establishment of an Idaho domicile and how they address part-time, nonresident student fees. Additionally, the standard Application for Admission, the primary source of student residency information, does not address all of the residency factors listed in statute and rules, and does not fully conform to the residency law.

The four institutions did not have adequate controls in place over their residency determination process. This has resulted in incorrect residency determinations or determinations based on insufficient evidence.

The State Board of Education Has Not Established Uniform Standards

Idaho Code requires the State Board of Education to “...adopt *uniform and standard rules* [emphasis added] and regulations to ...determine the residency status of any student and to establish procedures for a review of that status.”¹ However, the board has promulgated rules that require *each institution* to “...develop its own procedures to determine residency status of applicants, disseminate information about the classification process, and determine the documentation required of each applicant to the institution. The institution may require whatever records, documents, or affidavits it deems necessary to classify each applicant correctly.”² By delegating authority to each institution, the board has not met its statutory charge and has given institutions considerable discretion in establishing residency determination procedures and determining what evidence students must submit to obtain residency.

¹ IDAHO CODE § 37-3717(5), (2001).

² IDAHO ADMIN. CODE, July 1, 1993, IDAPA 08.01.04.101.

Lack of direction from the board has contributed to inconsistencies in how institutions have interpreted and implemented residency requirements. The following sections illustrate the lack of uniformity among institutions in two areas: evidence of domiciliary intent and part-time, nonresident fee schedules.

Evidence of Domiciliary Intent Is Inconsistent Among Institutions

As we discussed in the previous chapter, institutions have not treated the establishment of domicile uniformly. For example:

- For the 2002 fall semester, the registrar's office at Boise State University considered residency requests of 37 full-time students who had been physically present in Idaho for a year and typically submitted driver's licenses and vehicle registrations as proof of their residency status. However, residency was denied because these students had not maintained full-time employment for a year, filed Idaho State income taxes, or otherwise substantively demonstrated the establishment of an Idaho domicile.³
- For the same semester, we reviewed 61 requests for residency redetermination at the University of Idaho, of which 49 (80 percent) involved full-time students that were granted residency after students had attended the university for one year. Applicants typically supported their requests with Idaho driver's licenses, vehicle registrations, and/or voter registration cards (in some instances obtained a few days before submitting their requests). Similarly, 6 of the 19 redetermination requests reviewed at Lewis-Clark State College involved full-time, nonresident students who were granted residency based on Idaho driver's licenses, vehicle registrations, and voter registration cards.

Part-Time, Nonresident Fee Schedules Are Inconsistent Among Institutions

The institutions are inconsistent in the way they set fee schedules for part-time, nonresident students. Generally, part-time students (students enrolled for less than eight semester hours) pay a set fee for each semester hour enrolled. As shown in Exhibit 3.1, part-time, nonresident students at Idaho State University and the University of Idaho pay substantially more per credit hour than resident students. In contrast, Boise State University and Lewis-Clark State College charge the same part-time fee to residents and nonresidents alike.

³ Idaho State University could not provide a list of appeals and redeterminations, so we were unable to review their bases for denials. Officials told us that appeals and redeterminations for residency on the basis of the student's own domicile are denied unless the student can show full-time employment, filing of resident income taxes, or other substantive ties to Idaho.

Exhibit 3.1: Part-Time Undergraduate Fees (Per Semester Hour) by Residency Status, 2002–2003 Academic Year^a

	<u>Resident</u>	<u>Non-resident</u>	<u>Difference</u>
Boise State University	\$149	\$149	\$ -
Idaho State University	157	247	90
Lewis-Clark State College	140	140	-
University of Idaho	154	259	105

^a Graduate fees and fees for some undergraduate programs may be higher. However, the difference between resident and nonresident fees are the same.

Source: University and college catalogs.

An official of the State Board of Education explained that Idaho State University and the University of Idaho requested and were granted a part-time, nonresident fee schedule. On the other hand, because Boise State University and Lewis-Clark State College did not request a separate fee for their part-time, nonresident students, the board did not set one for them.

Application Forms Are Inadequate for Residency Determination

Applicants for undergraduate admission are required to complete a standard application form developed by the State Board of Education.⁴ Although this form is the primary source of residency information, it does *not*: (1) address all of the residency factors institutions are required to consider; (2) collect other relevant information necessary to readily determine if a student qualifies as a resident in some instances; and (3) conform to some of the residency requirements.

The application form captures some residency information, such as prospective student's address, high school information, and the basis under which residency

⁴ The standard undergraduate application form is included as Appendix C. Institutions have also developed their own graduate school application forms, which do not collect complete residency information.

is claimed. However, the form does not request information about other residency factors that institutions are required to consider, such as vehicle registration, driver's license, ownership of real property, voter registration, employment, accounts with financial institutions, and income tax returns. Without documentation, admissions staff cannot fully consider all required factors when making initial residency determinations.

The application form does not collect other relevant information necessary to readily determine whether or not a student qualifies for residency under other aspects of the residency law. For example, when a student claims residency on the basis of his or her spouse's residency, the only additional information requested is the spouse's county of residence. In determining residency, the county of residence is only minimally useful. Information about the spouse's address and duration of residency would be more relevant.

There are two ways the application form does not fully conform to the residency law. First, it incorrectly implies that a student must "have been employed full-time in Idaho for the past 12 months" to show domiciliary intent. Full-time employment is only one of several ways to prove domiciliary intent. Second, while Idaho Code § 33-3717(2)(e) provides a special exception that permits armed forces members stationed in Idaho to obtain residency, the form incorrectly implies that current armed forces members who have designated Idaho as their home of record may also obtain residency regardless of where they are stationed.⁵ The instances where an armed forces member stationed outside of Idaho would be attending an Idaho college or university are probably rare; nevertheless, the application form does not conform to Idaho residency law with respect to members of the armed forces.

The application forms of two neighboring states collect more complete and relevant information. Applicants to the Montana university system must respond to each of a series of "yes/no" questions addressing various residency factors such as the income tax returns, employment, dependency information, places of residence, and other information that helps determine the applicant's residency status. In Washington, university applicants must respond to a series of in-depth questions addressing residency factors, such as employment, driver's licenses, vehicle registrations, and parents' residencies, and are required to submit documentary evidence to support their answers.

⁵ Home of record is the place an individual designates as his or her home when joining the armed forces. U.S. Department of Defense, *Joint Federal Travel Regulations*, vol. I, Appendix A (August 2001), A-12.

Residency Determination Process Lacks Adequate Controls

We found the four institutions had not established adequate controls to ensure residency decisions are made correctly in accordance with state requirements. This has resulted in errors in residency determinations at all four institutions. Even though the total number of errors we identified was not high, each misclassification of a non-resident student as resident equates to loss of between \$23,000 and \$27,000 in fee revenue to the institutions over a four-year period.

Our review of the residency determination process focused on decisions made at three different levels:

1. Admissions office
2. Registrar's office
3. Residency review committees and the State Board of Education

Admissions Office

We reviewed 407 cases involving initial residency determinations made by university admissions staff at each of Idaho's four institutions for the 2002 fall semester.⁶ We found classification problems with 148 (36 percent) of these cases:

- In 8 cases, admissions staff clearly granted residency to students who did not qualify. Each of the four institutions had at least one of these cases.
- In 33 cases, information gathered by admissions staff did not clearly support the decisions. For instance, a student was granted residency based on her parents' residency even though the student's application contained conflicting information about where her parents lived.
- In 107 cases, students did not specify the basis for their residency claim on the application form. In these cases, admissions staff made residency determinations using judgment and drawing inferences from other information on the application. While this may expedite action on applications, such inferences can also increase the risk of inconsistency and error.

Registrar's Office

The registrar's office handles cases that involve residency appeals and requests for change in residency status. We reviewed 333 such cases for the 2002 fall

⁶ We selected cases where errors were most likely to occur, for example, cases with out-of-state home addresses and high school information.

semester and found that Boise State University, Lewis-Clark State College, and the University of Idaho incorrectly granted residency in 7 cases. Idaho State University could not provide a list of appeals and requests for change in residency status. Examples of incorrect residency determination included students who:

- Were absent from the state for longer than the one year allowed
- Claimed residency based on their membership in the Idaho National Guard, which is expressly excluded from the residency rules⁷

Residency Review Committees and the State Board of Education

The State Board of Education's administrative rules require each institution to establish a residency review committee consisting of three to five members to hear appeals by students who disagree with the registrar's decisions.⁸ The rules further allow students who disagree with the decision of their institution's residency review committee to appeal to the State Board of Education.⁹

We reviewed 28 cases appealed to residency review committees or to the board. In the following three cases, the committees or the board granted residency to students who did not meet state residency requirements:

1. A student had been physically present in Idaho for less than 12 months.
2. A student was a foreign national and held a student visa.
3. A student claimed residency based on his or her parents' residency status, although the parents did not meet the 12-month requirement.

Chapter 4 includes two recommendations to address our findings in this chapter.

⁷ IDAHO ADMIN. CODE, July 1, 1993, IDAPA 08.01.04.005.01.

⁸ Lewis-Clark State College did not have a residency review committee until we pointed out that one was required. The college has since assigned residency review responsibilities to an existing committee.

⁹ IDAHO ADMIN. CODE, July 1, 1993, IDAPA 08.01.04.103.

Chapter 4

Conclusions and Recommendations

The Legislature amended Idaho's residency law in 1992 in an effort to strengthen requirements for nonresident, full-time students to obtain residency at Idaho's four-year higher education institutions. Our review of the residency determination process shows the interpretation and application of state residency requirements may not reflect legislative intent.

The State Board of Education's failure to adopt uniform rules for making residency determinations has contributed to inconsistencies in how Idaho's four-year institutions have interpreted and implemented statutory requirements. Different interpretations of residency requirements have primarily focused on what is required to establish domicile in Idaho for fee purposes. Inadequate quality controls in the institutions' residency determination process have also resulted in errors to the residency determination process.

This lack of uniformity in the implementation of Idaho's residency requirements, as well as misclassification of nonresident students as resident, affect the amount of fees a student pays and the amount of fee revenue an institution receives. Nonresident students who are incorrectly granted residency status unfairly receive a subsidized education that law reserves for Idaho residents.

To address these issues, we offer three recommendations to help clarify legislative intent, bring uniformity in the implementation of state residency requirements, and ensure accuracy in the residency determination process.

Recommendations

1. The Legislature should consider amending Idaho Code to clarify:
 - a. Whether full-time, nonresident students are presumed to be in Idaho primarily for educational purposes—unless they clearly demonstrate they are primarily engaged in activities other than those of a student
 - b. Whether nonresident students must establish and maintain a domicile in Idaho for 12 months in order to qualify for residency
 - c. Whether students who are granted residency on the basis of their parents' Idaho domicile should be financially dependent upon their resident parents and be under a certain age

- d. The factors needed to show that domicile has been established primarily for purposes other than education, including any weighting of the factors
- 2. The State Board of Education should address the lack of uniformity in determining residency and other related issues by:
 - a. Amending its administrative rules to provide a uniform residency determination process
 - b. Modifying the statewide Application for Admission form to conform to state law and rules
 - c. Setting nonresident fees for part-time students in the same manner as for full-time students
- 3. Boise State University, Idaho State University, Lewis-Clark State College, and the University of Idaho should improve their residency determination process by:
 - a. Implementing quality assurance measures that identify high-risk residency determination cases for further review
 - b. Collecting information that addresses all residency factors listed in statute and rules, and basing residency determinations on full consideration of these factors

Appendix A

Nonresident Tuition Waivers, Spring 2003 Semester

As noted in Chapter 1, Boise State University, Idaho State University, Lewis-Clark State College, and the University of Idaho may waive nonresident tuition under one or more of the nonresident tuition waiver programs listed below.

<u>Waiver Type</u>	<u>Number of Waivers^a</u>	<u>Description</u>
Disadvantaged and deserving students	966	Under this program, institutions may waive nonresident tuition for up to 1 percent of institutions' general enrollment and up to an additional 2 percent for students enrolled in one of several designated technology programs.
Graduate assistants	604	Assistantships are established to supplement a student's course of study with employment appropriate to the student's academic pursuits. Graduate assistants are not required to pay nonresident tuition.
Intercollegiate athletics	543	The three universities are each authorized to waive nonresident tuition for up to 225 student athletes, and Lewis-Clark State College may waive nonresident tuition for up to 70 students.
Western undergraduate exchange	237	Qualifying students from member-states of the Western Interstate Commission for Higher Education may attend Idaho institutions at a reduced nonresident tuition rate. ^b
Washington reciprocity	115	Institutions may waive nonresident tuition for Washington residents when an equal number of waivers are made available for Idaho students attending Washington state institutions of higher education.
Utah reciprocity	68	Idaho State University is authorized to waive nonresident tuition for residents of Utah when an equal number of waivers are made available to Idaho students attending Utah State University.

^a Because institutions sometimes waived only a portion of nonresident tuition, a simple count of students who received these waivers could be misleading. Therefore, we calculated the full tuition waiver equivalent for each waiver category by: (1) totaling the dollar amount of the nonresident tuition waivers granted within each program; and (2) dividing that total by the institutions' nonresident fee to get the number of full nonresident tuition waivers that could have been granted for the same dollar amount.

^b Member-states of the Western Interstate Commission for Higher Education are Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, New Mexico, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

Continued on next page

Appendix A—continued

<u>Waiver Type</u>	<u>Number of Waivers</u>	<u>Description</u>
Mines out-of-state waiver	33	The College of Mines at the University of Idaho is authorized to grant nonresident tuition waivers to encourage enrollment in mining, metallurgy, and geology.
Other waivers	22	Includes nonresident tuition waivers for several small programs, such as the Oregon reciprocity program and waivers for university employees living out-of-state.
TOTAL	2,588	

Source: Office of Performance Evaluations staff analysis of data received from Boise State University, Idaho State University, Lewis-Clark State College, and the University of Idaho.

Appendix B

**Legal Analysis of the
Residency Statute**



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

REVISED

September 30, 2003

Rakesh Mohan, Director
Office of Performance Evaluations
STATEHOUSE MAIL

Re: Request for Legal Advice – Residence/Domicile Laws of Idaho

Dear Mr. Mohan:

By your letter to Attorney General Lawrence Wasden dated September 4, 2003, you have asked for legal advice concerning the residence and domicile laws of this state as they relate to the status of students attending the state's institutions of higher learning. Attorney General Wasden has asked me to respond to your letter. The two questions you posed in your letter, a copy of which is attached for ready reference, are discussed below. Please note that the legal definition of the terms "residence" and "domicile" are different and are not interchangeable. In the simplest terms, "domicile" is a state of mind as to the place a person considers as "home" (which Idaho Code § 33-3717 implies may be discerned from objective facts as listed therein) and "residence" is the place where one physically lives or resides. Section 33-3717 covers the issues raised in your letter. A copy of that complex statute is attached for your convenience.

Question 1: Can a nonresident student gain residency if he or she attends school full-time?

The simple answer to your first question is yes. Explaining how a nonresident student can become, or be considered to be, a resident requires a detailed analysis.

Some context is necessary. Idaho Code § 33-3717 sets forth a very complex description of who must pay tuition to attend state colleges and universities and then lists exceptions. Individuals classified as "nonresident students" are required to pay tuition (payment for the cost of instruction) and fees (payments

for the physical plant, room and board, and other costs associated with attending a state university). Individuals classified as “resident students” may legally only be required to pay non-tuition related fees. Section 33-3717 prohibits charging tuition to resident students attending the University of Idaho, Idaho State University, Boise State University, or Lewis and Clark State College.¹

The cost of instruction, in lieu of tuition, for resident students is paid by appropriations to the university from the state general fund. Idaho Code § 33-3717(2) sets forth 11 separate categories of students who are entitled to “resident student” classification.

It is my understanding that you want this analysis to focus on the issue of how a student who begins his or her college career in Idaho as a non-resident student can achieve in-state residency and domicile and thereafter be required to pay only fees to attend a State of Idaho university and not tuition.

To gain resident student status in Idaho, an individual classified as a nonresident student must satisfy the standards set forth in Idaho Code § 33-3717(2)(a) or Idaho Code § 33-3717(2)(b). The statute creates two primary ways in which non-resident students who are attending school full-time may become or be considered resident students.

A. The Non-Resident Student Who has a Resident Parent, Parents, or Guardian. Idaho Code § 33-3717(2)(a) provides the standard for evaluating whether a nonresident (regardless of age, financial dependency, or financial independence) has gained resident student status by virtue of the fact that the student’s parent, parents, or legal guardians have resident status. In order to satisfy this requirement, the parent, parents, or legal guardians must meet a single mandatory standard. The parent, parents, or legal guardians must have maintained their *bona fide* domicile in Idaho for at least one year prior to the beginning day of the term in which the student wishes to be enrolled as a resident student. Section 33-3717(2)(a) notes that “[d]omicile in the case of a parent or guardian, means that individual’s true, fixed and permanent home and place of habitation.”

If this standard is met, the student is entitled to be classified as a “resident student” for the next term.

¹ Similarly, Section 12 of the 1889 Territorial Act that created the University of Idaho prohibits the imposition of a fee for tuition to any resident student attending the University of Idaho (this Territorial Act was incorporated into the Idaho Constitution at art. IX, § 10).

B. The Financially Independent Student. Idaho Code § 33-3717(2)(b) provides the standard for evaluating whether a non-resident, financially independent student has gained in-state resident status. In order to satisfy this standard, the student must provide evidence that he or she has met each of three mandatory standards. The standards are:

1. Receives less than 50% of his/her support from nonresident parents or legal guardians. (IDAPA 08.01.04.005.09 defines how support is interpreted.)
2. Has continuously resided in Idaho for the 12 months prior to the beginning day of the term in which the student wishes to be enrolled as a resident student. (IDAPA 08.01.04.005.03 defines how “continuously resided” is interpreted to mean not left the state for more than a total of 30 days during the 12-month period.)
3. Has established Idaho as his/her domicile² for a purpose that is primarily other than educational. There is no time or duration requirement set forth for the establishment of domicile under Idaho Code § 33-3717(2)(b). The time requirement applies only to the residency standard discussed in section B(2) hereof. In this respect, Section 33-3717(2)(b) is different than Idaho Code § 33-3717(2)(a) in the requirements for the establishment of domicile. Section 33-3717(2)(a) requires that a formerly nonresident parent, or formerly nonresident parents, or legal guardians be domiciled in Idaho for a period of at least one year. Section 33-3717(2)(b) only places a time requirement (12 months) on residency. It places no time or duration requirement on the domicile standards (for more on this distinction, see the discussion of your Question 2 below).

² The standards for establishing such domicile are set forth in Idaho Code § 33-3717(4) and IDAPA 08.01.04.005.08 and IDAPA 08.01.04.102. These standards set forth the test for determining the key fact of whether a student is domiciled in Idaho “primarily for purposes other than educational”. This test is multifaceted and, pursuant to IDAPA 08.01.04.005.08, the university evaluating the domicile issue may consider nine specific and one general factor however, nothing requires that a student satisfy all factors and nothing sets forth how many of the qualifying “domicile” factors must be satisfied. Although the text seems to imply that satisfaction of more than one factor is necessary, nothing indicates that more weight is to be given to one factor over another and in fact nothing expressly requires that any specific factor be satisfied. As such, the application of this test could vary greatly from university to university and from case to case.

For a further discussion of the issue of how a nonresident student can qualify as a resident, see the attached copy of an Informal Guideline of the Attorney General authored by former Deputy Attorney General Bradley H. Hall to Senator Gary J. Schroeder, dated August 19, 1993.

Question 2: When must a student, who is independent of his or her parents, establish a domicile in Idaho in order to gain residency for tuition purposes?

The domicile of a student need not be established for any specified period of time or duration prior to enrolling as a "resident student." The 12-month "look back" period only applies to the requirement of continuous residence. The issue of domicile "primarily for purposes other than educational" is controlled by the terms of Idaho Code § 33-3717(2)(b). By its express terms, the 12-month domicile requirement relating to domicile of parents and legal guardians, which is set forth in Idaho Code § 33-3717(2)(a), does not apply to a non-dependent student.

Even if a student has met the rather subjective test for domicile in Idaho, he or she must also have "continuously resided in the State of Idaho for twelve (12) months next preceding the opening day of the term the student proposes to attend the college or university" as a resident student. Idaho Code § 33-3717(2)(b). See also IDAPA 08.01.04.005.01(b) and IDAPA 08.01.04.005.03. "Continuously resided" is a defined term and does not prohibit leaving the state. In fact, it allows departure from the state for up to 30 days per year. See IDAPA 08.01.04.005.03.

The analysis of this issue by a former counsel for the University of Idaho (see attached Memorandum of Senior Associate Counsel Randy Geller, dated December 5, 1997) appears to be a proper analysis of this issue. The statute and rule require continuous residency in Idaho for the 12 months immediately prior to applying for resident status, but do not require domicile status for those 12 months. The statute is clear on this point.

The Idaho Legislature amended Idaho Code § 33-3717 in 1992, effective January 15, 1993, by, *inter alia*, adding language to Idaho Code § 33-3717(2)(b) as reflected in the copy of the Idaho Session Laws, Chapter 119, 1992, at page 395, et seq., attached hereto. The amendments reinforce our conclusion that there is no duration requirement for domicile of the student. It is clear from a reading of the amendatory language that there is no domicile duration requirement that applies to the student. Compare that with the amending

Rakesh Mohan
September 30, 2003
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language in the Session Law of Idaho Code § 33-3717(2)(a) which clearly requires a domicile duration of "at least one (1) year . . ." for the parent, parents, or guardian of a student.

Very recently established indices of domicile may show that the declaration of Idaho as the place of domicile is insincere but a short length is not clearly indicative of insincerity. "Domicile" is the concept of the intent to make Idaho the place that a person considers home. That intent could have been formulated yesterday and be as strong as if it was formulated last year. The key in evaluating domicile intent is a multifactor test. See Idaho Code § 33-3717(4) and IDAPA 08.01.04.102, "Factors for Determining Domicile."

This letter of advice does not constitute a directive but is, rather, an objective review and analysis of the Idaho law at issue and constitutes our best prediction of how a court of law would interpret and apply those statutes.

Sincerely,



CHRISTOPHER W. "KIT" CLARK
Deputy Attorney General
Contracts & Administrative Law Division

KWC:blm
Enc.



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Debbie S. Field
Donna H. Boe

September 4, 2003

The Honorable Lawrence Wasden
Attorney General
700 W. Jefferson, Rm. 210
STATEHOUSE MAIL

Dear Mr. Attorney General:

The Office of Performance Evaluations is conducting an evaluation of college and university compliance with state residency requirements. In our visits to Idaho's four-year institutions we have identified some differences in the way residency laws and rules have been interpreted. The inconsistencies observed focus on two questions:

Can a nonresident student gain residency if he or she attends school full-time?

In 1992, the Legislature made several changes to Idaho's residency statutes. Specifically, language was added to I.C. § 33-3717(2)(b) restricting residency to individuals who have "...established a bona fide domicile in this state *primarily for purposes other than educational.*" (Emphasis added.) In addition, a new subsection (I.C. § 33-3717(4)) was added to the statutes specifying that, "The establishment of a new domicile in Idaho by a person formerly domiciled in another state has occurred if such person is physically present in Idaho *primarily for purposes other than educational* and can show satisfactory proof that the person is without present intention to return to such other state or to acquire a domicile at some other place outside of Idaho." (Emphasis added.) A copy of these code sections is attached.

Based on our audit work, it appears that some institutions have granted residency to *full-time nonresident students* who have resided in Idaho for 12 months and taken other steps to establish ties to Idaho (e.g., obtaining an Idaho driver's license and vehicle registration). Can nonresident students who attend school full time be granted residency under Idaho's current residency law?

The Honorable Lawrence Wasden
September 4, 2003
Page 2 of 2

When must a student, who is independent of his or her parents, establish a domicile in Idaho in order to gain residency for tuition purposes?

Idaho Code § 33-3717(2)(b) provides that a student who receives less than 50 percent of his or her support from out of state parents may be classified as a resident if "...the student has continuously resided in the state for 12 months..." and has "...established a bona fide domicile in this state primarily for purposes other than educational."

The University of Idaho's Senior Associate University Counsel has concluded that nonresident students can qualify for residency by continuously residing in the state for 12 months and establishing a domicile in Idaho *at any point* prior to seeking residency status. (See attached.)

However, other sections of Idaho's residency law (e.g., I.C. § 33-3717(2)(a)) require a bona fide domicile be established *at least 12 months* prior to obtaining residency. Do independent nonresident students need to demonstrate the establishment of a bona fide domicile in the state at least 12 months prior to obtaining residency?

Your analysis of these issues would be appreciated, and will help us form recommendations for the State Legislature and the State Board of Education to address the inconsistencies identified. We would appreciate your response by September 17. Please do not hesitate to contact me if you have any questions or need additional information. Thank you for your assistance.

Sincerely,



Rakesh Mohan

Enc.

cc: Terry Coffin, Chief, Contracts and Administrative Law Division

33-3717. Tuition at state colleges and universities not required - Exceptions.

(1) Any student who shall be a full time regularly enrolled resident student in any degree granting program at a state college or university now or hereafter established shall not be required to pay tuition in said college or university, excepting in a professional college, school, or department, or for extra studies or for part-time enrollment. The state board of education and board of regents for the University of Idaho may prescribe rates of tuition for nonresident students, and shall adopt uniform regulations, including a standard definition of a full time regularly enrolled student, applicable to all said colleges and universities.

(a) Tuition shall be defined as the cost of instruction at the colleges and universities. The cost of instruction shall not include those costs associated with said colleges and universities, such as maintenance and operation of physical plant, student services and institutional support, which are complementary to, but not a part of the instructional program.

(b) Matriculation fees shall be defined as the fee charged to students for educational costs excluding the cost of instruction. The state board of education and board of regents for the University of Idaho may prescribe matriculation fees for resident students.

(c) Terms used in this subsection shall be defined as they are defined in the Idaho College and Universities Statewide Cost Study: General Education Funds (Final Costs Analysis).

(2) For purposes of this section, a resident student is:

(a) Any student who has one (1) or more parent or parents or court-appointed guardians who are domiciled in the state of Idaho. Domicile, in the case of a parent or guardian, means that individual's true, fixed and permanent home and place of habitation. It is the place where that individual intends to remain, and to which that individual expects to return when that individual leaves without intending to establish a new domicile elsewhere. To qualify under this section, the parent, parents or guardian must have maintained a bona fide domicile in the state of Idaho for at least one (1) year prior to the opening day of the term for which the student matriculates.

(b) Any student, who receives less than fifty percent (50%) of the student's support from a parent, parents or legal guardians who are not residents of this state for voting purposes, but which student has continuously resided in the state of Idaho for twelve (12) months next preceding the opening day of the term during which the student proposes to attend the college or university and who has in fact established a bona fide domicile in this state primarily for purposes other than educational.

(c) Subject to subsection (3) of this section, any student who is a graduate of an accredited secondary school in the state of Idaho, and who matriculates at a college or university in the state of Idaho during the term immediately following such graduation regardless of the residence of the student's parent or guardian.

(d) The spouse of a person who is classified, or is eligible for classification, as a resident of the state of Idaho for the purposes of attending a college or university.

(e) A member of the armed forces of the United States, stationed in the state of Idaho on military orders.

(f) A student whose parent or guardian is a member of the armed forces and stationed in the state of Idaho on military orders and who receives fifty percent (50%) or more of support from parents or legal guardians. The student, while in continuous attendance, shall not lose that residence when the student's parent or guardian is transferred on military orders.

(g) A person separated, under honorable conditions, from the United States armed forces after at least two (2) years of service, who at the time of separation designates the state of Idaho as his intended domicile or who has Idaho as the home of record in service and enters a college or university in the state of Idaho within one (1) year of the date of separation.

(h) Any individual who has been domiciled in the state of Idaho, has qualified and would otherwise be qualified under the provisions of this statute and who is away from the state for a period of less than one (1) calendar year and has not established legal residence elsewhere provided a twelve (12) month period of continuous residence has been established immediately prior to departure.

(i) A student who is a member of any of the following Idaho Native American Indian tribes, regardless of current domicile, shall be considered an Idaho state resident for purposes of tuition at institutions of higher education: Members of the following Idaho Native American Indian tribes, whose traditional and customary tribal boundaries included portions of the state of Idaho, or whose Indian tribe was granted reserved lands within the state of Idaho: (i) Coeur d'Alene tribe; (ii) Shoshone-Paiute tribes; (iii) Nez Perce tribe; (iv) Shoshone-Bannock tribes; (v) Kootenai tribe.

(3) A "nonresident student" shall mean any student who does not qualify as a "resident student" under the provisions of subsection (2) of this section, and shall include:

(a) A student attending an institution in this state with the aid of financial assistance provided by another state or governmental unit or agency thereof, such nonresidency continuing for one (1) year after the completion of the semester for which such assistance is last provided.

(b) A person who is not a citizen of the United States of America, who does not have permanent or temporary resident status or does not hold "refugee-parolee" or "conditional entrant" status with the United States immigration and naturalization service or is not otherwise permanently residing in the United States under color of the law and who does not also meet and comply with all applicable requirements of this section.

(4) The establishment of a new domicile in Idaho by a person formerly domiciled in another

state has occurred if such person is physically present in Idaho primarily for purposes other than educational and can show satisfactory proof that such person is without a present intention to return to such other state or to acquire a domicile at some other place outside of Idaho. Institutions determining whether a student is domiciled in the state of Idaho primarily for purposes other than educational shall consider, but shall not be limited to the following factors:

(a) Registration and payment of Idaho taxes or fees on a motor vehicle, mobile home, travel trailer, or other item of personal property for which state registration and the payment of a state tax or fee is required.

(b) Filing of Idaho state income tax returns.

(c) Permanent full-time employment or the hourly equivalent thereof in the state of Idaho.

(d) Registration to vote for state elected officials in Idaho at a general election.

(5) The state board of education and board of regents of the University of Idaho shall adopt uniform and standard rules and regulations applicable to all state colleges and universities now or hereafter established to determine residence status of any student and to establish procedures for review of that status.

(6) Appeal from a final determination denying resident status may be initiated by the filing of an action in the district court of the county in which the affected college or university is located; an appeal from the district court shall lie as in all civil actions.

(7) Nothing contained herein shall prevent the state board of education and board of regents of the University of Idaho from waiving tuition to be paid by nonresident students.

(8) Nothing contained in this act shall apply to junior colleges now or hereafter established, or to post-secondary vocational-technical schools now or hereafter established not connected to or a part of a state college or university.

(9) Nothing contained herein shall prevent the state board of education and board of regents of the University of Idaho from establishing quotas, standards for admission, standards for readmission, or other terms and requirements governing persons who are not residents for purposes of higher education.

(10) For students who apply for special graduate and professional programs including, but not limited to the WAMI (Washington, Alaska, Montana, Idaho) Regional Medical Program, the WICHE Student Exchange Programs, Creighton University School of Dental Science, the University of Utah College of Medicine, and the Washington, Oregon, Idaho (WOI) Regional Program in Veterinary Medical Education, no applicant shall be certified or otherwise designated as a beneficiary of such special program who has not been a resident of the state of Idaho for at least one (1) calendar year previous to the application date.

[I.C., § 33-3717, as added by 1970, ch. 226, § 1, p. 634; am. 1974, ch. 83, § 1, p. 1173; am.

1978, ch. 22, § 1, p. 43; am. 1979, ch. 73, § 1, p. 182; am. 1981, ch. 333, § 1, p. 695; am. 1986, ch. 34, § 1, p. 106; am. 1987, ch. 50, § 1, p. 81; am. 1989, ch. 108, § 1, p. 248; am. 1992, ch. 119, § 1, p. 394; am. 1994, ch. 140, § 1, p. 312.]

Compiler's notes. The words in parentheses so appeared in this section as enacted.

The words "this act" refer to S.L. 1970, ch. 226, as amended, compiled as this section.

Section 2 of S.L. 1970, ch. 226 contained a repeal.

Section 3 of S.L. 1970, ch. 226 provided that the act should take effect on and after July 1, 1970.

Section 2 of S.L. 1992, ch. 119 provided that this act would be in full force and effect on and after January 15, 1993.

Sec. to sec. ref. This section is referred to in § 33-3720.

Opinions of Attorney General.

Although the state may impose a reasonable durational residency requirement for tuition purposes and for participation in higher education programs and courses, a five calendar year residency requirement is unreasonable and therefore violates the equal protection clause of the United States Constitution. OAG 86-11 (decision prior to 1987 amendment).

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

August 19, 1993

The Honorable Gary J. Schroeder
Idaho State Senate
1289 Highland
Moscow, ID 83843

THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE

Dear Senator Schroeder:

This is in response to your letter in which you ask for legal guidance regarding the residency statute for purposes of student fees and tuition, Idaho Code § 33-3717. Attached to your letter was a copy of a letter from the ASUI President and Attorney General in which the assertion is made that the statute creates an irrebuttable presumption that if a student enters the state primarily for educational purposes, he or she must forever be classified a nonresident. It also suggests that the statute is impermissibly vague.

In our opinion, the statute does not create any such irrebuttable presumption nor is it unconstitutionally vague. During the 1992 legislative session, Idaho Code § 33-2717 was amended such that the focus of the test for qualifying for resident student status is domiciliary intent rather than physical presence alone. The statute, patterned after that adopted in other states (*e.g.*, RCWA § 28.B.15.012), states in part:

The establishment of a new domicile in Idaho by a person formerly domiciled in another state has occurred if such person is physically present in Idaho primarily for purposes other than educational and can show satisfactory proof that such person is without a present intention to return to such other state or to acquire a domicile at some other place outside of Idaho. Institutions determining whether a student is domiciled in the state of Idaho primarily for purposes other than educational shall consider, but shall not be limited to the following factors:

(a) Registration and payment of Idaho taxes or fees on a motor vehicle, mobile home, travel trailer, or other item of personal property

for which state registration and the payment of a state tax or fee is required.

(b) Filing of Idaho state income tax returns.

(c) Permanent full-time employment or the hourly equivalent thereof in the state of Idaho.

(d) Registration to vote for state elected officials in Idaho at a general election.

Idaho Code § 33-3717(4).

According to the statute, once a student has met any applicable durational requirement (*e.g.*, Idaho Code § 33-3717(2)(b), continuous residence in state for 12 months prior to opening day of semester), he or she may attempt to offer "satisfactory proof" that his or her domicile has changed to Idaho. This is done by demonstrating compliance with the factors listed in the statute as well as others which reflect domiciliary intent. The ultimate factual determination is whether the student's *primary* purpose for presence in Idaho is other than educational. The statute does not preclude a student who initially enters the state primarily for educational purposes from later demonstrating a change in the primary purpose for remaining in the state. While the burden of proof is with the student to overcome the presumption which arises from the initial classification as a nonresident, this does not amount to an irrebuttable presumption.

Again, there is nothing in the statute which precludes a student "who is physically present in Idaho" from meeting the applicable durational requirements and from attempting to overcome the presumption by offering "satisfactory proof" of domiciliary intent. Contrary to the statutory scheme struck down in *Vlandis v. Kline*, 412 U.S. 451, 93 S. Ct. 2230 (1973), Idaho Code § 33-3717 does not prevent a student "from ever rebutting the presumption of nonresidence during the entire time that he remains a student, no matter how long he has been a bona fide resident of the state for other purposes." 93 S. Ct. at 2237, n.9. As the *Vlandis* Court further stated:

The state can establish such reasonable criteria for in-state status as to make virtually certain that students who are not, in fact, bona fide res-

idents of the state, but who have come there solely for educational purposes, cannot take advantage of the in-state rates.

93 S. Ct. at 2237.

While there is no decision by an Idaho court on the current statute, after the *Vlandis* decision, various statutory and regulatory schemes which are similar to Idaho's have been sustained against attack on constitutional or statutory grounds. See *Peck v. University Residence Committee*, 807 P.2d 652, 661-63 (Kan. 1991) (regulations which consider various factors in determination of "domiciliary resident" for purposes of tuition upheld against vagueness and equal protection challenge); *DeCecco v. Board of Regents, University of Wisconsin*, 442 N.W.2d 585, 588-90 (Wis. App. 1989) (statute creating a presumption that one "who enters and remains in [the] state primarily to obtain an education is presumed to continue to reside outside [the] state" held "not to create the presumption declared unconstitutional in *Vlandis*" (emphasis added)); *Hauslohner v. Regents of the University of Michigan*, 272 N.W.2d 154 (Mich. App. 1978) (university rules referring to "primary or sole purpose of attending the university, rather than to establish a domicile in Michigan" applied; no irrebuttable presumption found); *Podgor v. Indiana University*, 381 N.E.2d 1273 (Ind. 1978) (university rules which permit university officials to consider various factors in determining "whether a non-resident student's predominant purpose in coming to Indiana has changed," *Id.* at 1279, upheld as providing ascertainable standards and as consistent with equal protection clause, *Id.* at 1283-85). See also *Lister v. Hoover*, 655 F.2d 123 (7th Cir. 1981); *Hooban v. Boling*, 503 F.2d 648 (6th Cir. 1974); *Hayes v. Board of Regents of Kentucky State University*, 495 F.2d 1326 (6th Cir. 1974); *Kelm v. Carlson*, 473 F.2d 1267 (6th Cir. 1973); *Arizona Board of Regents v. Harper*, 495 P.2d 453 (Ariz. 1972); *Starns v. Malkerson*, 326 F. Supp. 234 (D. Minn. 1970), *aff'd* 401 U.S. 985, 91 S. Ct. 1231 (1971).

In summary, it is our view that the Idaho courts would not view Idaho Code § 33-3717 as violating the *Vlandis v. Kline* proscription against creating an irrebuttable presumption of non-residency.

In answer to your other questions, each situation must be evaluated on a case-by-case basis. The determination of residency in a given case depends on a review of the specific facts and circumstances presented, and further depends upon whether a student is able to meet durational requirements and to present satisfactory proof of domicile in Idaho. You are correct in your assess-

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

ment that the determination is primarily dependent upon the intent of the student as evidenced by various factors such as full-time employment, payment of state taxes, etc.

You also asked whether a distinction in residency based upon marriage to an Idaho resident would be illegal. We have not found any cases which have struck down a student residency classification based upon the "marital privilege."

I hope you will find this information helpful.

Sincerely,

BRADLEY H. HALL
Deputy Attorney General
State Board of Education

By Facsimile Only

**ATTORNEY-CLIENT COMMUNICATION
CONFIDENTIAL AND PRIVILEGED**

MEMORANDUM

December 5, 1997

TO: Dan Davenport, Director of Admissions and Financial Aid
Reta Pikowsky, Registrar

FROM: Randy Geller, Senior Associate University Counsel *RJG*

RE: "Becoming a Resident Student for Tuition/Fee Purposes"

Associate Provost Thomas asked me to put together a one page guide on how to gain residency that could be provided to students by the end of the semester so that the students could make plans for fall semester 1998. Associate Provost Thomas would like to have the information sheet available by the next meeting of Dean's Council, which is Wednesday December 10 at noon. Attached is a revised version of "Becoming a Resident Student for Tuition/Fee Purposes." A previous version was provided to you by memorandum dated November 12, 1997. Please disregard the November 12 version. Please review the revised version and call me with your comments as soon as possible.

In reviewing the residency statute and rules again, I have come to the conclusion that the November 12 version indicated that attaining resident status was more difficult than it in fact is. I am comfortable with my previous analysis concerning the financial support and continuously residing issues and that analysis has remained the same. However, I believe that my analysis of the domicile issue in the November 12 version was too restrictive. I indicated that a student moving to Idaho from out-of-state had to establish domicile in Idaho at least 12 months before the start of the semester for which the student sought resident status. This is incorrect. Neither the statute nor the rules imposes any durational requirement for domicile.¹ As a practical matter, this means that while a student must "continuously reside" in Idaho for the 12 consecutive months immediately preceding the start of the semester for which the student seeks resident status, the student need only establish domicile in Idaho some time during that 12 month period. That said, the University should encourage students who wish to seek resident status to establish domicile in Idaho as soon as possible after their arrival in Idaho.


Please call me with your comments as soon as possible.

Enclosure

cc: Dene Thomas, Associate Provost (hand-delivered)

rg23/Residency 1

¹ The statute and rules are explicit regarding the 12 month durational requirement in other areas so the omission of such a requirement with respect to the establishment of domicile must be accepted as having been intentional.

 **University of Idaho**
Office of University Counsel
201 Administration Building
Moscow, Idaho 83844-3158
Phone: 208-885-6125
FAX: 208-885-8931
E-Mail: counsel@uidaho.edu

Becoming a Resident Student for Tuition/Fee Purposes



I have moved to Idaho from out-of-state and my parents are not residents of Idaho, how can I become a resident student for tuition/fee purposes?

You must demonstrate three things:

That during the 12 months immediately preceding the term for which you wish to obtain resident status, you have received less than 50% of your financial support from a parent, parents, or legal guardian who are not residents of Idaho for voting purposes.

That you have continuously resided in Idaho for the 12 months immediately preceding the term for which you wish to obtain resident status. Absence from Idaho for normal vacations, travel, work, military training or other similar circumstances totaling 30 days or less during this 12 month period is not disqualifying; and

That you have established Idaho as your bona fide domicile primarily for purposes other than educational. The law indicates this requirement is met by doing such things as registering your car in Idaho, obtaining an Idaho driver's license, registering to vote in Idaho, working full-time in Idaho, filing an Idaho state income tax return, owning real property in Idaho, establishing an account with an Idaho financial institution, and providing evidence that you have abandoned your previous domicile in another state. No one factor is decisive. The more of these things you do, the stronger your claim that you have established Idaho as your domicile. However, maintaining an out-of-state vehicle registration, driver's license, or voter registration card will make it difficult for you to establish that Idaho is your domicile.

OK, that's the law, how does this work as a practical matter?

If you moved to Idaho from another state to attend UI beginning in August 1997 and were not initially classified as an Idaho resident, the earliest your residence classification can be changed is Fall Semester 1998. Within 15 days after the first day of Fall Semester 1998, you will have to file a notarized Residency Information Affidavit (Affidavit) with either the Registrar's Office or the Admissions Office. First, the Affidavit must state that you have continuously resided in Idaho for the past 12 consecutive months. If you leave Idaho for the entire summer, you will not meet this requirement. However, you may leave Idaho for up to a total of 30 days during the 12 month period. Leaving Idaho during holidays, such as Thanksgiving and Christmas, and for a week or two in the summer is acceptable, as long as the total number of days outside Idaho does not exceed 30.

Second, the Affidavit must demonstrate that you have established Idaho as your bona fide domicile primarily for purposes other than educational. This is established by doing the following things as soon as possible after you move to Idaho: (1) register your car in Idaho; (2) obtain an Idaho driver's license; (3) register to vote in Idaho; (4) establish an account with an Idaho financial institution; and (5) abandon your domicile in the state where you were formerly domiciled. Other factors indicating that you have established Idaho as your domicile include: (1) working full-time in Idaho; (2) filing an Idaho state income tax return; and (3) owning real property in Idaho. Doing these things will strengthen your case.

Third, the Affidavit must demonstrate that your parent(s) or guardian(s) are not residents of Idaho for voting purposes and that you have received less than 50% of your financial support from your parent(s) or guardian(s) during the 12 months you have resided in Idaho. One way of demonstrating that you meet the financial support requirement is to show that your parent(s) or guardian(s) did not claim you as a dependent on their most recent federal income tax return. This would be their tax return for calendar year 1997.

For additional information, please contact the either the Registrar's Office (208-385-5566) or the Admissions Office (208-385-6326).

TION 33-3717, IDAHO CODE, TO CLARIFY THE RESIDENCY LAW FOR TUITION PURPOSES; AND PROVIDING AN EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 33-3717, Idaho Code, be, and the same is hereby amended to read as follows:

33-3717. TUITION AT STATE COLLEGES AND UNIVERSITIES NOT REQUIRED -- EXCEPTIONS. (1) Any student who shall be a full time regularly enrolled resident student in any degree granting program at a state college or university now or hereafter established shall not be required to pay tuition in said college or university, excepting in a professional college, school, or department, or for extra studies or for part-time enrollment. The state board of education and board of regents for the University of Idaho may prescribe rates of tuition for nonresident students, and shall adopt uniform regulations, including a standard definition of a full time regularly enrolled student, applicable to all said colleges and universities.

(a) Tuition shall be defined as the cost of instruction at the colleges and universities. The cost of instruction shall not include those costs associated with said colleges and universities, such as maintenance and operation of physical plant, student services and institutional support, which are complementary to, but not a part of the instructional program.

(b) Matriculation fees shall be defined as the fee charged to students for educational costs excluding the cost of instruction. The state board of education and board of regents for the University of Idaho may prescribe matriculation fees for resident students.

(c) Terms used in this subsection shall be defined as they are defined in the Idaho College and Universities Statewide Cost Study: General Education Funds (Final Costs Analysis).

(2) For purposes of this section, a resident student is:

(a) Any student who has one (1) or more parent or parents or court-appointed guardians who are domiciled in the state of Idaho. Domicile, in the case of a parent or guardian, means that individual's true, fixed and permanent home and place of habitation. It is the place where that individual intends to remain, and to which that individual expects to return when that individual leaves without intending to establish a new domicile elsewhere. To qualify under this section, the parent, parents or guardian must be residing in the state on have maintained a bona fide domicile in the state of Idaho for at least one (1) year prior to the opening day of the term for which the student matriculates.

(b) Any student, who receives less than fifty percent (50%) of the student's support from a parent, parents or legal guardians who are not residents of this state for voting purposes, but which student has continuously resided in the state of Idaho for twelve (12) months next preceding the opening day of the term during which the student proposes to attend the college or university and who has in fact established a bona fide domicile in this state primarily for purposes other than educational.

(c) Subject to subsection (3) of this section, any student who is

a graduate of an accredited secondary school in the state of Idaho, and who matriculates at a college or university in the state of Idaho during the term immediately following such graduation regardless of the residence of the student's parent or guardian.

(d) The spouse of a person who is classified, or is eligible for classification, as a resident of the state of Idaho for the purposes of attending a college or university.

(e) A member of the armed forces of the United States, stationed in the state of Idaho on military orders.

(f) A student whose parent or guardian is a member of the armed forces and stationed in the state of Idaho on military orders and who receives fifty percent (50%) or more of support from parents or legal guardians. The student, while in continuous attendance, shall not lose that residence when the student's parent or guardian is transferred on military orders.

(g) A person separated, under honorable conditions, from the United States armed forces after at least two (2) years of service, who at the time of separation designates the state of Idaho as their his intended domicile or who has Idaho as the home of record in service and enters a college or university in the state of Idaho within one (1) year of the date of separation.

(h) Any individual who has been domiciled in the state of Idaho, has qualified and would otherwise be qualified under the provisions of this statute and who is away from the state for a period of less than one (1) calendar year and has not established legal residence elsewhere provided a twelve (12) month period of continuous residence has been established immediately prior to departure.

(3) A "nonresident student" shall mean any student who does not qualify as a "resident student" under the provisions of subsection (2) of this section, and shall include:

(a) A student attending an institution in this state with the aid of financial assistance provided by another state or governmental unit or agency thereof, such nonresidency continuing for one (1) year after the completion of the semester for which such assistance is last provided.

(b) A person who is not a citizen of the United States of America, who does not have permanent or temporary resident status or does not hold "refugee-parolee" or "conditional entrant" status with the United States immigration and naturalization service or is not otherwise permanently residing in the United States under color of the law and who does not also meet and comply with all applicable requirements of this section.

(4) The establishment of a new domicile in Idaho by a person formerly domiciled in another state has occurred if such person is physically present in Idaho primarily for purposes other than educational and can show satisfactory proof that such person is without a present intention to return to such other state or to acquire a domicile at some other place outside of Idaho. Institutions determining whether a student is domiciled in the state of Idaho primarily for purposes other than educational shall consider, but shall not be limited to the following factors:

(a) Registration and payment of Idaho taxes or fees on a motor vehicle, mobile home, travel trailer, or other item of personal

property for which state registration and the payment of a state tax or fee is required.

(b) Filing of Idaho state income tax returns.

(c) Permanent full-time employment or the hourly equivalent thereof in the state of Idaho.

(d) Registration to vote for state elected officials in Idaho at a general election.

(35) The state board of education and board of regents of the University of Idaho shall adopt uniform and standard rules and regulations applicable to all state colleges and universities now or hereafter established to determine residence status of any student and to establish procedures for review of that status.

(46) Appeal from a final determination denying resident status may be initiated by the filing of an action in the district court of the county in which the affected college or university is located; an appeal from the district court shall lie as in all civil actions.

(57) Nothing contained herein shall prevent the state board of education and board of regents of the University of Idaho from waiving tuition to be paid by nonresident students.

(68) Nothing contained in this act shall apply to junior colleges now or hereafter established, or to post-secondary vocational-technical schools now or hereafter established not connected to or a part of a state college or university.

(79) Nothing contained herein shall prevent the state board of education and board of regents of the University of Idaho from establishing quotas, standards for admission, standards for readmission, or other terms and requirements governing persons who are not residents for purposes of higher education.

(810) For students who apply for special graduate and professional programs including, but not limited to the WAMI (Washington, Alaska, Montana, Idaho) Regional Medical Program, the WICHE Student Exchange Programs, Creighton University School of Dental Science, the University of Utah College of Medicine, and the Washington, Oregon, Idaho (WOI) Regional Program in Veterinary Medical Education, no applicant shall be certified or otherwise designated as a beneficiary of such special program who has not been a resident of the state of Idaho for at least one (1) calendar year previous to the application date.

SECTION 2. This act shall be in full force and effect on and after January 15, 1993.

Approved April 1, 1992.

CHAPTER 120
(S.B. No. 1431)

AN ACT

RELATING TO THE COMMISSION ON HUMAN RIGHTS; AMENDING SECTION 67-5904, IDAHO CODE, TO INCREASE THE AMOUNT OF COMPENSATION PAID TO MEMBERS OF THE COMMISSION.

Appendix C

Standard Application for Admission

APPLICATION FOR UNDERGRADUATE ADMISSION to Idaho's Public Colleges & Universities

For office use only

Mail the completed application or a photocopy along with the appropriate nonrefundable application fee(s) to each Idaho public institution to which you are applying. **Copy of file located at <http://admissions.boisestate.edu/commonapplication.pdf>**

Applying to:

☐ **Boise State University**
1910 University Dr.,
Boise, ID 83725-1320
Fee: \$30 **1-800-824-7017**
www.boisestate.edu

☐ **Lewis-Clark
State College**
500 8th Ave.,
Lewiston, ID 83501
Fee: \$35 **1-800-933-LCSC**
www.lcsc.edu

☐ **College of
Southern Idaho**
PO Box 1238,
Twin Falls, ID 83303
Fee: None **(208) 733-9554**
www.csi.edu

☐ **North Idaho College**
1000 W. Garden Ave.,
Coeur d'Alene, ID 83814
Fee: \$25 **(208) 769-3311**
www.nic.edu

☐ **Eastern Idaho
Technical College**
Student Services: 1600 S. 25th E.,
Idaho Falls, ID 83404
Fee: \$10 **1-800-662-0261**
www.eitc.edu

☐ **University of Idaho**
PO Box 444264
Moscow, ID 83844-4264
Fee: \$40 **1-888-884-3246**
www.uidaho.edu

☐ **Idaho State University**
Office of Admissions,
Box 8270
Pocatello, ID 83209
Fee: \$30 **(208) 282-2475**
www.isu.edu

Start Date: ☐ Fall, 20____ ☐ Spring, 20____ ☐ Summer, 20____ ☐ Summer & Fall, 20____

APPLICANT INFORMATION

Name: _____ **Name You Prefer:** _____
(as on Soc. Sec. Card) last first middle

Other Names Appearing on Records: _____

U.S. Social Security Number: _____ **Date of Birth (mo/day/year):** _____/_____/_____

Permanent Home Address: _____
number & street/PO box city county state zip area code phone

Current Mailing Address: _____
number & street/PO box city county state zip area code phone

Mailing Address valid until the following date: _____/_____/_____ **E-mail Address:** _____

GENERAL INFORMATION

Citizenship: ☐ USA ☐ Other **Native Language:** ☐ English ☐ Other: _____

If citizenship is "other," answer the following questions: Country of citizenship: _____

Resident alien of U.S.: ☐ Yes, Resident alien number: A- _____ ☐ No, Current visa type: _____

Gender: (optional) ☐ Female ☐ Male **Are you a U.S. Veteran:** ☐ Yes ☐ No Dates of Service _____ to _____

Ethnicity: (optional) ☐ African American/Black ☐ American Indian/Native American/Alaska Native ☐ Asian American
☐ Caucasian/White ☐ Native Hawaiian or other Pacific Islander ☐ Hispanic/Latino/Latina
☐ Other: _____

Highest level of education or degree attained by either parent: ☐ Bachelor ☐ Other Degree _____

Emergency Contact: _____
(For ALL to complete. If under 18, list parents or guardians here.) name relationship

number & street/PO box city county state zip area code phone

ENROLLMENT INFORMATION

Intended Degree Type: ☐ Certificate ☐ Associate ☐ Bachelor ☐ Second Bachelor ☐ Not Seeking Degree or Certificate

Program Type: ☐ Academic Program ☐ Professional Technical Program

Intended Major (Refer to each institution's publication for a list of majors offered): _____

first

second (optional)

☐ Undecided

Enrollment Status: ☐ New ☐ Transfer ☐ Returning (readmission) ☐ High School Student Seeking Dual Enrollment

Do you plan to apply for federal financial aid? ☐ Yes ☐ No

Campus Location: If planning to take courses primarily at outreach locations, list these locations: _____

• Complete Reverse Side •

Name: _____

ACADEMIC INFORMATION

Have you taken the: ☐ ACT: Date _____ ☐ SAT: Date _____ ☐ COMPASS: Date _____

List the last high school you attended and any schools since, including colleges, trade schools, correspondence, etc. *Do not omit any schools.* Attach a separate sheet if more space is needed. Failure to list all schools attended, or submission of inaccurate information, is considered fraud and is cause for refusal of admission or dismissal from the institution. *Students seeking certificates or degrees must have official transcripts submitted from each school listed. To be considered official, transcripts must be mailed in a sealed envelope directly from the school to the institution's admissions office.*

DID/WILL YOU GRADUATE FROM HIGH SCHOOL? ☐ Yes (month/year _____ / _____) ☐ No

High School _____ City _____ State _____

DO YOU HAVE A GED OR HIGH SCHOOL EQUIVALENCY CERTIFICATE? ☐ Yes (month/year _____ / _____) ☐ No

If yes, degree-seeking applicants are required to submit official GED test scores.

Are/were you a Tech Prep Student? ☐ Yes ☐ No If yes, in which program area did you enroll? _____

Name of College, Trade School, etc.	City & State	Dates Attended	Grad. Date	Degree/# Credits Earned

RESIDENCY

Idaho residency status MAY be determined by one or more of the following. Please check all statements that are applicable if claiming Idaho residency for tuition purposes. Residency for community colleges is determined by county of residence.

State of Residence: _____ From _____ / _____ / _____ to _____ / _____ / _____ If less than 12 months, previous state: _____

County of Residence: _____ From _____ / _____ / _____ to _____ / _____ / _____ If less than 12 months, previous county: _____

- ☐ One or more of my parents/legal guardians or spouse's parents is a resident of Idaho and has maintained a bona fide domicile in Idaho for at least one year prior to the opening day of the school term during which I plan to enroll. If I am a community college applicant, I receive at least 51% of my financial support from my parents/legal guardians.

Parent's name _____ and address _____ From _____ / _____ / _____ to _____ / _____ / _____

- ☐ I receive less than fifty percent of my financial support from parents or legal guardians who are not residents of Idaho for voting purposes. I have continuously resided in Idaho for at least 12 months before the opening day of the school term at this institution. I have been employed full-time in Idaho for the past 12 months.
- ☐ I am a graduate of an accredited Idaho high school and I will attend this institution during the term immediately following graduation. If I am a community college applicant, this item may not be applicable to determine residency.
- ☐ I am married to an Idaho resident. My spouse is a resident of _____ County.
- ☐ I or my spouse is a member of the Armed Forces stationed in Idaho on military orders, or Idaho is my or my spouses designated military home of record. I or my spouse is stationed in _____ County. Records may be requested.
- ☐ One or more of my parents or legal guardians, from whom I receive fifty percent or more of my support, is a member of the Armed Forces stationed in Idaho. They are stationed in _____ County. Records may be requested.
- ☐ I have been separated under honorable conditions from the Armed Forces after at least two years of service. At the time of separation, I designated the State of Idaho as my intended domicile or indicated Idaho as my home of record, and I am entering this institution within one year of the date of separation. Records may be requested.
- ☐ I have been away from the State of Idaho for a period of less than one calendar year. I have not established legal residence elsewhere. I was a resident of the State of Idaho for a continuous twelve month period immediately prior to departure.
- ☐ I am a member of one of the following Idaho American Indian tribes: Coeur d'Alene; Shoshone-Paiute; Nez Perce; Shoshone-Bannock; Kootenai. Records may be requested.

SIGNATURE

In signing this form, I acknowledge that failure to disclose and submit accurate information may result in denial of admission or dismissal from the institution. I certify that all information provided is complete and true. By signing this application, I certify that I am in compliance with the Federal Military Selective Service Act, 50 U.S.C. sec. 453, or that I am exempt from the same. Men between the ages of 18 and 25 must be registered with Selective Service to be eligible for enrollment at a state college, to receive state and federal financial aid, and to be employed in a state or federal job. You may register with Selective Services on-line at <http://www.sss.gov>

Acceptance or receipt of financial aid and scholarship awards certifies that the funds will be used for educational purposes.

Signature of Applicant: _____ Date: _____

Idaho public colleges subscribe to the principles and laws of the State of Idaho and the Federal Government, including applicable executive orders pertaining to civil rights. These institutions are committed to the policy that all persons shall have equal access to programs and facilities without regard to age, color, creed, marital status, national or ethnic origin, physical handicap, race, religion, or sex.

Responses to the Evaluation



December 17, 2003

Rakesh Mohan
Office of Performance Evaluations
Joe R. Williams Building
Boise, Idaho 83720-005

Dear Mr. Mohan:

Boise State University agrees that there is inconsistency among the Idaho universities in determining the residency classifications of their students. We support your office's recommendations to revise Idaho code and State Board of Education guidelines to improve uniformity.

The following are observations we hope are considered along with the report findings:

Charging Part-Time Students Nonresident Tuition: People from other states are steadily moving to the Boise area, buying houses, and looking to make this their permanent home. Boise State has been able to allow these people, and their family members, to enroll part-time at a rate that is affordable until they fulfill the 12 month residency requirement. The change recommended in the report could make attending college classes cost-prohibitive for the area's newly arrived citizens.

Modifying the Statewide Application for Admission: Any modifications to the Statewide Application for Admission need to blend the need for better residency information with the need to deliver good customer service. Citizens who want to take an Introduction to Painting class at their local institution should not be hassled by a complex legal document that takes 30 minutes to complete. The residency portion of the statewide application already consumes ½ page of a 2-page document. Since this document will be completed by over 40,000 people per year – many of them under 18 years of age – it needs to be crafted in concise, understandable language.

Thank you for taking our observations into consideration. Please feel free to contact me if you have questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Wheeler".

Mark Wheeler
Dean of Enrollment Services



Office of
the President
Campus Box 8310
Pocatello, Idaho
83209-8310
(208) 282-3440
FAX (208) 282-4487

December 18, 2003

Mr. Rakesh Mohan
Office of Performance Evaluations
Joe R. Williams Building
Lower Level, Suite 10
Boise, Idaho 83720

Dear Mr. Mohan:

Thank you for a very thorough review and study on residency requirements at Idaho State University.

We concur with the results and are pleased you found we were compliant with the intent of the regulations.

Sincerely,

Richard L. Bowen
President

dh

Lewis-Clark

S T A T E

C O L L E G E

Connecting Learning to Life

December 19, 2003

Mr. Rakesh Mohan
Director, Office of Performance Evaluations
Idaho State Legislature
PO Box 83720
Boise, Idaho 83700-0055

Dear Mr. Mohan:

Thank you for the opportunity to review and respond to the final draft of the study on residency requirements at Idaho's higher education institutions, which was requested by the Joint Legislative Oversight Committee and compiled by the Office of Performance Evaluations. I pulled together the Lewis-Clark State staff team, which worked with Jim Henderson and Ned Parrish during their site visit, to collectively respond to the study. The team included our Registrar, Director of Admissions and Market Development, Admission Supervisor/Application Specialist, Director of Financial Aid, and me.

The following comments/observations serve as our response to the findings and recommendations contained within the study:

- 1) We would welcome the adoption of uniform rules by the State Board of Education to assist us in making residency determinations.
- 2) The Legislature, working through the State board of Education, needs to be more delineative regarding documentation necessary for a student to gain residency. Such action would provide us with more guidance on when and how much documentation is needed.
- 3) Our team felt the issue of students being granted residency on the basis of their parents' Idaho domicile could be politically sensitive when it comes to telling an Idaho taxpayer that his or her children (regardless of age) are not eligible for automatic residency.
- 4) We would endorse any effort to modify the statewide Application for Admission Form so that it garners all necessary information to make adequate residency decisions.

Vice President for Student Affairs

500 8th Avenue, Lewiston, ID 83501-2698 Phone (208)792-2218 Fax (208)792-2314 www.lcsc.edu

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- 5) We have questions as to whether the law actually does exclude (or should exclude) someone being able to claim residency based on their having been assigned by military order to a unit of the Idaho National Guard.
- 6) Subsequent to the audit site visit, and as a result of increased awareness of rules/statutes and our own "self-study," quality assurance measures have been implemented to identify high risk residency determination cases. Also, as noted in the report, when our Registrar realized that a residency review committee was mandated by rule, she immediately assigned residency review to an existing committee.

In conclusion, our team believes that proper determination of residency could be assisted by clear and consistent guidelines. We believe it is much less an issue that colleges do not have adequate controls for residency determinations, as it is an issue that we don't have clear guidelines to set such controls.

Please feel free to contact me if there are any questions or concerns regarding the LCSC response. Thank you for your attention to this important higher education issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard L. Meier". The signature is fluid and cursive, with the first name "Richard" being more prominent than the last name "Meier".

Richard L. Meier, Ed.D.
Vice President for Student Affairs and Enrollment Mgt.
Lewis-Clark State College

C: Dr. Dene Thomas, President
Lewis-Clark State College



University of Idaho

Office of the President
P.O. Box 443151
Moscow, Idaho 83844-3151
Phone: 208-885-6365
FAX: 208-885-6558

December 18, 2003

Rakesh Mohan, Director
Office of Performance Evaluations
Idaho State Legislature
Joe R. Williams Building
Lower Level, Suite 10
P.O. Box 83720
Boise, ID 83720-0055

Re: Response to Review by the Office of Performance Evaluation of Residency
Requirements for Idaho's Higher Education Institutions

Dear Mr. Mohan:

The University of Idaho participated in the review process conducted by the Office of Performance Evaluation on the Residency Requirements for Idaho's Higher Education Institutions and have reviewed the final draft and recommendations.

While the report notes some issues associated with admissions files and requests for changes in residency status, we believe the number of actual determination errors is very low. Any adjustments to the process for review of applications for admission must consider the number of applications that are handled by each of the institutions and the need for both effective and timely response to those applications. Implementation of significant additional review requirements could have consequences on the staffing levels of the admissions offices of the institutions.

Specific Recommendations:

Changes in Evaluation Process of Requests to Change Residency Status: The on-site review conducted this past summer found several issues that were the basis for development of a more specific set of criteria for evaluating requests for changes in residency status and for implementing additional documentation requirements for students requesting a change in residency status. These steps were phased in for Fall 2003 and Spring 2004 and will be fully implemented for Fall 2004.

Consistency Between Institutions in Determining Residency: We concur with the recommendation of the report for development of a more uniform residency determination process across the institutions of the state. Regardless of the process established, however, judgment will always be part of that process, and these judgments

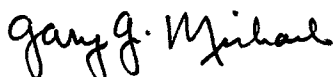
may result in some inconsistencies. Any efforts to establish a uniform process should involve the admission officers and registrars of the affected institutions.

Changes in the Application for Admissions: Similarly, the report recommends modification of the Application for Admissions to include items necessary for a complete evaluation of residency. Any modifications to this application form to address the concerns of the report should also involve the admission officers of the four affected institutions. There will need to be some balance between the complexity of the application form and the efficiency in completing and evaluating an application.

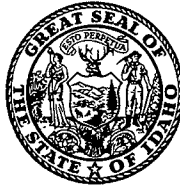
Part-time Fees: Institutions must be allowed flexibility in the application of the non-resident fee to part-time students. This flexibility is needed to accommodate courses offered through distance education to students who may be located anywhere in the world, students that travel from around the region and country to attend credit-bearing workshops and seminars, and those taught to a varied student body during the summer and intersession.

Process for Allowing Change of Residency: The approach of the University of Idaho in allowing students to establish residency “if they have resided in Idaho for 12 months and can demonstrate that they have established a domicile during that 12 month period” was implemented after a legal review by the office of the UI University Counsel. This opinion is consistent with legal analysis conducted by the Idaho Office of the Attorney General. Students may establish a domicile while a student and during their 12 months of residency in Idaho. In other words, the student does not have to establish the domicile and then begin the 12-month residency period. This interpretation, consistent with the legal analysis, seems, in our opinion, to be reasonable. The number of students who establish residency in this manner is a relatively small percentage of the total number of non-resident students. Although these individuals may have been students during the 12 months they are in Idaho establishing residency, their Idaho residency often continues beyond graduation as they enter the work force of Idaho and contribute to its economy. In addition, most of these students work in Idaho during their tenure at the University and are also frequently here with families, where some of the family also works in Idaho. These individuals also contribute to the Idaho economy.

Sincerely,

A handwritten signature in dark ink, reading "Gary G. Michael". The signature is written in a cursive, flowing style.

Gary G. Michael
Interim President



IDAHO STATE BOARD OF EDUCATION

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December 19, 2003

Rakesh Mohan, Director
Office of Performance Evaluations
Joe R. Williams Building
Lower Level, Suite 10
Boise, ID 83720-0055
Statehouse Mail

Dear Mr. Mohan:

On behalf of the State Board of Education, I would like to commend you and your staff for the courteous and thorough manner in which you approached your review of residency requirements for Idaho's higher education institutions. A copy of this report will be provided to all Board members and institutions for their review and development of a plan for addressing the recommendations made in your report.

Thank you for the opportunity to participate in this study.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary W. Stivers", written over a horizontal line.

Gary W. Stivers
Executive Director

GWS/am



State of Idaho

DIVISION OF FINANCIAL MANAGEMENT

Executive Office of the Governor

DIRK KEMPTHORNE
Governor
BRADLEY T. FOLTMAN
Administrator

700 West Jefferson, Room 122
P.O. Box 83720
Boise, Idaho 83720-0032
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December 10, 2003

Rakesh Mohan, Director
Office of Performance Evaluations
700 W State St. Suite 10
Boise, Idaho 83720-0055

Dear Rakesh:

On behalf of Governor Kempthorne, I would like to express my sincere appreciation for the opportunity you extended to our staff to participate in the study concerning residency requirements at Idaho's higher education institutions. The report has been reviewed and found consistent with the information presented and we are supportive of the conclusions drawn.

I received positive feedback from Ms. McClaran, of our staff, regarding the development of the report and I look forward to continued cooperation with you on future projects.

Sincerely,

A handwritten signature in black ink, appearing to read "Brad Foltman".

Brad Foltman
Administrator

cc Brian Whitlock
Jane McClaran

BTF:ah

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